

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

AKAPHONG SOMEE,

Case No. 2:13-cv-01190-JCM-PAL

Plaintiff,

ORDER

v.

RAY HOBBS, et al.,

Defendants.

This is a counseled first-amended 28 U.S.C. § 2254 habeas petition (ECF No. 17). Petitioner Akaphong Somee raises two grounds for relief based on alleged violations of his Sixth and Fourteenth Amendment rights to effective assistance of counsel. In ground 1 he asserts that (a) trial counsel was ineffective at sentencing when he failed to investigate, to present accurate information at sentencing and to object to an inaccurate presentence investigation report; and that (b) trial counsel failed to move to withdraw Somee's guilty plea, which was not made knowingly, voluntarily or intelligently. *Id.* at 7-11. In ground 2 he contends that appellate counsel was ineffective for failing to raise ground 1 on direct appeal. *Id.* at 11-14.

Respondents filed a motion to dismiss, arguing that grounds 1(B) and 2(B) were unexhausted (ECF No. 23, pp. 4-5). Subsequently, on January 14, 2016, Somee, through counsel, filed a notice to the court indicating that his state postconviction proceedings recently concluded and that all grounds in the first-amended petition are now exhausted (ECF No. 31). Therefore, Somee requested that respondents be directed to answer the first-amended petition. While Somee's request was styled as a

1 "notice" and not a motion, respondents have not filed anything in response to Somee's  
2 request. Having reviewed the record, the court shall direct respondents to answer the  
3 first-amended petition. Given the procedural history in this case, respondents may  
4 include in their answer any relevant procedural defenses.

5 **IT IS THEREFORE ORDERED** that respondents' motion to dismiss (ECF No. 23)  
6 is **DENIED** as moot as set forth in this order.

7 **IT IS FURTHER ORDERED** that petitioner's motion to stay and abey (ECF No.  
8 26) is **DENIED** as moot.

9 **IT IS FURTHER ORDERED** that respondents shall have **sixty (60) days** from  
10 the date of entry of this order to file an answer to the amended petition. The answer  
11 shall contain all substantive and procedural arguments as to all grounds of the petition,  
12 and shall comply with Rule 5 of the Rules Governing Proceedings in the United States  
13 District Courts under 28 U.S.C. §2254.

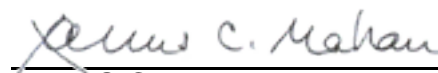
14 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** following  
15 service of respondents' answer in which to file a reply.

16 **IT IS FURTHER ORDERED** that respondents' motions to extend time to file a  
17 response to the petition (ECF Nos. 20, 21, and 22) are all **GRANTED nunc pro tunc**.

18 **IT IS FURTHER ORDERED** that respondents' motion to extend time to file a  
19 reply in support of the motion to dismiss (ECF No. 27) is **GRANTED nunc pro tunc**.

20 **IT IS FURTHER ORDERED** that petitioner's motion to extend time to oppose the  
21 motion to dismiss (ECF No. 24) and motion to extend time to reply in support of his  
22 motion for stay (ECF No. 30) are both **GRANTED nunc pro tunc**.

23  
24 DATED: February 23, 2016.

25   
26 JAMES C. MAHAN  
27 UNITED STATES DISTRICT JUDGE  
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